IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HOMEAWAY.COM, INC., Plaintiff, - against - CITY OF CHICAGO, CHICAGO DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER PROTECTION, and SAMANTHA FIELDS, In Her Official Capacity As Commissioner of the Chicago Department of Business Affairs and Consumer Protection, Defendants.	No. __________

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

For its complaint, Plaintiff HomeAway.com, Inc. ("HomeAway") states as follows:

INTRODUCTION

1. This is an action to enjoin and declare unlawful the enforcement against HomeAway by defendants the City of Chicago (the "City"), the Chicago Department of Business Affairs and Consumer Protection, and Samantha Fields, in her official capacity as Commissioner of the Chicago Department of Business Affairs and Consumer Protection (collectively, "Defendants") of Ordinance No. O2016-5111 (the "Ordinance")—a newly enacted and deeply flawed law that purports to regulate short-term rentals within the City. This action is brought pursuant to 42 U.S.C. § 1983, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the Court's equitable powers.

2. Unlike other, more straightforward efforts by other municipalities to regulate short-term rentals, the City's 50-plus page Ordinance, which the Chicago Tribune rightly

described as "dizzyingly complex,"[1] threatens internet services such as HomeAway with crippling fines for listing short-term rentals on their platforms, and does so based upon arbitrary categories—such as "advertising platform" versus "intermediary" and "shared housing unit" versus "vacation rental"—that cannot meaningfully be distinguished from one another and that fail to provide fair notice to regulated parties of what conduct is prohibited and what conduct is required. As shown below, the Ordinance not only is incurably complex, but would require both short-term rental owners and listing platforms to guess at what category of regulation applies to them. The Ordinance does not define intelligibly even the most fundamental terms—including "vacation rentals," "shared housing units," "advertising platforms," and "intermediaries"—from which all obligations under the Ordinance, and the imposition of significant fines, necessarily arise. The Ordinance is also replete with errors and ambiguities that render certain aspects of the regulations unintelligible.

3. Despite providing no notice of what might constitute a violation, the Ordinance authorizes potentially crippling fines for any such violation, either by a platform or by a homeowner. If a website fails to comply with various provisions of the Ordinance, such as by failing to register as the correct status, publishing non-compliant third-party listings, operating without a license, or failing to submit reports to the City, the website can be fined up to $3,000 per violation, per listing, per day. Similar fines are imposed on homeowners if they err in determining which of the functionally identical regulatory classifications applies to them.

4. The flaws in the Ordinance make it impossible for a person of ordinary intelligence, or any reasonable person who might be subject to the Ordinance, to discern what is

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[1] J. Byrne, *Airbnb Rules Easily Pass Chicago City Council Despite Vocal Opposition*, Chicago Tribune (June 22, 2016), *available at* http://www.chicagotribune.com/news/local/politics/ct-chicago-city-council-airbnb-rules-met-20160622-story.html.

required of that person and what is prohibited, despite the threat of potentially crippling fines. As such, the Ordinance violates the First Amendment and the Due Process Clause of the Fourteenth Amendment. On this basis alone, the Ordinance is unlawful and its enforcement against HomeAway should be enjoined.

5. The Ordinance also violates the Communications Decency Act, 47 U.S.C. § 230 (the "CDA"), which prohibits the imposition of liability on the provider of an interactive computer service under any state or local law that purports to treat the provider "as the publisher or speaker of any information provided by another information content provider." *Id.* § 230(c)(1), (e)(3). This prohibition has been read broadly to prohibit any effort to hold an interactive computer service, including a website, liable based on the content of third-party postings on the site. HomeAway indisputably is an interactive computer service provider within the meaning of the CDA. The Ordinance would make online advertising platforms liable for fines if they allow third parties to post advertisements for listings that do not include license numbers, and would make intermediaries liable if they permit listings where a registration process has not yet been initiated for the underlying homeowners. Whether HomeAway is properly classified as an "intermediary" or an "advertising platform," the Ordinance would purport to treat and punish HomeAway "as the publisher or speaker" of "information provided by another information content provider," in violation of the CDA.

6. The Ordinance also violates the Stored Communications Act, 18 U.S.C. § 2701 *et seq*. (the "SCA"), by requiring internet platforms to disclose confidential customer information and communications without any legal process. HomeAway is both an electronic communication service provider and a remote computing service provider as those terms are defined in the SCA. The SCA provides that electronic communication service providers and

remote computing service providers may not disclose customer information to government entities absent certain legal process, such as a warrant, a court order or a subpoena. Contrary to this prohibition, the Ordinance would require HomeAway to disclose detailed information about homeowners and properties listed on its platform, including information drawn from private communications between homeowners and potential guests.

7. For similar reasons, the Ordinance violates the Fourth Amendment to the United States Constitution, which protects against unreasonable searches and seizures, including of third-party electronic communications. The City's attempt to force HomeAway to disclose such private materials violates the Fourth Amendment rights of both HomeAway and its customers. HomeAway has standing to enforce both its own Fourth Amendment rights and those of its customers whose information the Ordinance demands be disclosed.

8. The Ordinance, if enforced, also would violate the First Amendment to the United States Constitution in multiple ways. The Ordinance purports to impose content-based restrictions on listings or advertisements for short-term rentals—communications that are protected speech under the First Amendment. In order to justify this content-based regulation, the City must show, at a minimum, that the Ordinance is narrowly tailored to further a substantial government interest. The City cannot satisfy this burden because its ostensible goal of regulating short-term rentals can be achieved through means that are less restrictive and do not burden the speech of internet platforms—such as by enforcing listing restrictions directly against the owners of listed properties who actually post the allegedly unlawful listings.

9. The Ordinance also imposes a prior restraint on speech by internet platforms through licensing rules that purport to condition the right to post content on an arbitrary and highly discretionary licensing process, contrary to the First Amendment. Among other things,

applicants seeking a license must submit vaguely defined documents such as a "Quality of Life" plan and a plan by which the applicant appears to be required to ensure compliance with the Ordinance by homeowners—and the Ordinance leaves it to the discretion of the Commissioner whether to deem these ill-defined requirements met.

10. The Ordinance also violates the First Amendment by subjecting internet platforms to fines and other liabilities for the publication of third-party listings, even though the Ordinance does not condition any such fines or liabilities upon a requirement of knowledge on the part of the platform that any specific listing or content is unlawful. This absence of any scienter requirement—and in essence the imposition of strict liability for the posting of allegedly unlawful content—contravenes the First Amendment.

11. The Ordinance also violates the First Amendment by requiring internet platforms to make prescribed statements to their customers about the terms and operation of the Ordinance.

12. Finally, the manner in which the City has sought to apply the Ordinance to HomeAway violates the Equal Protection Clause of the Fourteenth Amendment. Even though the Ordinance, on its face, provides no notice to a regulated party of the licensing category into which it falls, the City has actively and publicly promoted the view—in a series of public statements at the time the Ordinance was passed—that HomeAway is an "advertising platform" but that Airbnb, Inc. ("Airbnb"), HomeAway's principal competitor in Chicago, is an "intermediary." The City has made these public statements despite the absence of any provision of the Ordinance that would support the distinction. In essence, the City appears to have pre-designated the only two major players in the market into each of the two unintelligible categories of the Ordinance.

13. The City's statements indicating a preconceived distinction between Airbnb and HomeAway for purposes of the Ordinance are problematic. Among other things, and as alleged in detail below, the Ordinance consistently favors "intermediary" status—the designation the City pre-selected for Airbnb—by including provisions that incentivize homeowners to opt for "shared housing unit" status, to the significant benefit of entities designated as "intermediaries." By contrast, entities deemed to be "advertising platforms"—the status that the City appears to have selected for HomeAway—are severely disadvantaged by the operation of the Ordinance. These differences are exacerbated by the "head start" that the City has given Airbnb by pre-designating it as an "intermediary," because the Ordinance contains a "first come first served" feature that allows Airbnb, the only "intermediary" designated to date, to lock in customer listings in a way that will make it nearly impossible for "advertising platforms" to compete. This tilting of the competitive playing field is exacerbated further by the definitional problems described above—namely, that the Ordinance itself provides no basis for distinguishing between "intermediaries" and "advertising platforms," so the only way in which a regulated entity can try to function under the Ordinance is to reach an agreement with the City, as Airbnb apparently did.

14. Despite months of discussions with the City in an effort to reach a workable solution that would allow HomeAway to comply with the Ordinance, the parties were unable to reach a resolution, leaving HomeAway no choice but to file this action. The City has indicated that it expects immediate compliance by HomeAway, which requires HomeAway to comply with provisions that it believes are unlawful and gives rise to a high risk of the City imposing fines.

15. Failure to enjoin the Ordinance will cause irreparable harm to HomeAway and will harm the public interest. Absent an injunction, HomeAway will face a Hobson's choice.

On the one hand, it can try to comply with the unlawful and conflicting demands of the Ordinance—a path that will (1) expose it to significant fines and penalties depending on the discretionary enforcement of the Ordinance; (2) subject it to liability as a "publisher" of third-party information, contrary to the express terms of the CDA; (3) require it to violate the SCA by releasing its customers' protected and confidential information—a disclosure that cannot later be undone and that potentially could expose HomeAway to litigation by customers; and (4) deprive it of its constitutional rights to due process, equal protection, and freedom of speech. On the other hand, HomeAway can cease conducting what it believes to be a lawful enterprise that benefits many Chicago residents, increases commerce in the City, and benefits visitors and tourists, and as a consequence suffer loss of both substantial business revenues and customer goodwill. And under either scenario, the discriminatory manner in which the City has crafted and plans to implement the Ordinance will cause HomeAway irreparable harm through the loss of a substantial portion of its Chicago business to the only other competitor in the Chicago market. Enforcement also will cause serious injury to individual homeowners by threatening them with serious fines without providing clear notice of what conduct is prohibited.

PARTIES

16. Plaintiff HomeAway is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Austin, Texas. HomeAway maintains websites that provide an online marketplace for people to list, search, and book short-term and vacation housing accommodations.

17. Defendant City of Chicago is a municipal corporation located within the State of Illinois.

18. Defendant Chicago Department of Business Affairs and Consumer Protection is the City department charged with enforcement of the Ordinance.

19. Defendant Samantha Fields is the Commissioner of the Chicago Department of Business Affairs and Consumer Protection.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action under 28 U.S.C. § 1331 because HomeAway asserts claims under 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, for violation of rights under the United States Constitution and federal law.

21. This Court may declare the legal rights and obligations of the parties in this action pursuant to 28 U.S.C. § 2201 because the action presents an actual case or controversy within the Court's jurisdiction.

22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all Defendants are located wholly within, and transact business within, this Judicial District and the State of Illinois, and because a substantial portion of the events giving rise to HomeAway's claims occurred within this Judicial District.

FACTUAL ALLEGATIONS

A. HomeAway

23. HomeAway is a world leader in vacation rentals, with websites representing more than two million online bookable listings, and is part of the Expedia, Inc. family of brands. HomeAway was founded in 2006 and is based in Austin, Texas.

24. Through HomeAway, homeowners from around the globe may list their properties for vacation or short-term rental, and guests may search for and find available properties that meet their criteria.

25. HomeAway operates three short-term rental websites directed principally to individuals in the United States: HomeAway.com, VRBO.com, and VacationRentals.com. These websites together represent one of the largest vacation rental listing networks in the world.

26. For over 10 years, HomeAway has focused on offering families a way to vacation together as a family by facilitating the listing of entire homes for vacation rental, including for such activities as lakeside vacations, ski trips, and outdoor exploration. By renting a home, families can have the space and privacy to enjoy their vacation together in a residential environment. Whereas hotels and shared accommodations might focus on providing a comfortable overnight stay for a single guest, HomeAway seeks to facilitate an affordable and home-like experience for families to spend their vacation time together. The service also provides a way for home owners to earn additional income to meet their financial needs. HomeAway has been named one of "America's 100 Most Trustworthy Companies" by Forbes Magazine.

27. Through HomeAway's websites, guests can search for fully furnished, privately owned residential properties, including homes, condominiums, villas, cabins, houseboats, and other properties that owners rent to the public on a nightly, weekly, or monthly basis. HomeAway's websites bring together millions of guests seeking vacation rentals with owners of more than one million properties in all 50 states and in 190 countries.

28. Homeowners provide the content for any listings they post on the HomeAway websites, including information about the property, amenities, and rental rates and terms. The process for listing properties on HomeAway is automated, so that a listing appears on the website almost immediately after it is posted by a homeowner. Although HomeAway retains rights to block or remove listings, it does not manually review all listings when they are submitted. Among other problems, such advance review would undermine the efficiencies and convenience that the website offers and that are important to guests looking for available rentals.

29. Guests who use HomeAway's websites arrange their reservations and other details directly with the homeowners. Guests who find a property that meets their criteria may contact the homeowner directly by telephone or through the form-based communication tools on HomeAway's websites. Homeowners and guests can make arrangements to book and rent properties in several ways. They can message each other through HomeAway's websites (a service called HomeAway Secured Communication), or provide or exchange telephone numbers or personal email addresses and communicate with one another directly. Since December 2013, HomeAway also has offered homeowners and guests the option to make reservations and payments through an online booking feature. Payments made through this feature are processed by a third-party service.

30. Many bookings—including in Chicago, where more than 600 homeowners are currently listing properties—occur by means of direct communications between owners and guests. The only data in HomeAway's possession reflecting these transactions are online communications between homeowners and guests through HomeAway's Secured Communication service. Such communications may or may not show whether homeowners and would-be guests reached agreements for bookings, because in some instances where communications are initiated, the final arrangements are made through independent communication channels, such as telephone, or no booking is actually made.

B. The Ordinance

Background and Overview

31. Before the passage of the Ordinance, the City did not restrict residential short-term rentals, except that non-resident owners were required to obtain a vacation rental license. The City imposed no requirements on residents who lived in their home and either rented their

homes on weekends or rented portions of their home, and no requirements whatsoever on websites that published advertisements for short-term rentals.

32. The Chicago City Council passed the Ordinance on June 22, 2016. The Ordinance adds 49 sections to the Municipal Code and amends 9 other sections. A true and correct copy of the June 22, 2016 Ordinance is attached as **Exhibit 1**. The Ordinance, including several amendments, became effective on March 14, 2017.[2]

33. The Ordinance, broadly speaking, regulates short-term rental providers (*i.e.*, individual homeowners that rent their properties on a short-term basis) and internet platforms (*i.e.*, internet services that allow individuals to list their properties for rental). As described below, the Ordinance imposes numerous restrictions on any homeowner who rents part or all of his or her home for any length of time. The Ordinance also imposes a series of requirements on platforms that publish listings by homeowners for short-term rentals. The Ordinance adds a host of new obligations for such platforms, and backs those obligations up with provisions for significant fines for any violation—up to $3,000 per violation per day for any act of noncompliance. The Ordinance similarly provides for fines against homeowners who fail to comply with its terms.

Specific Provisions Giving Rise to HomeAway's Claims

34. The Ordinance has been aptly described by the Chicago Tribune as "dizzyingly complex," spanning 58 single-spaced pages. HomeAway focuses here on the critical provisions that make the Ordinance fundamentally unenforceable and unlawful.

[2] Several sections added or amended by the Ordinance were further amended on November 9, 2016, November 16, 2016, and February 22, 2017. None of the amendments address sections specifically discussed herein and do not impact HomeAway's arguments. All references to sections in the Ordinance herein are equivalent to references to the current operative Municipal Code sections.

The Ordinance Creates Flawed Distinctions Between Critical Categories, Making Compliance Impossible Yet Threatening Platforms and Owners With Substantial Fines for Incorrect Decisions

35. The obligations imposed on internet platform under the Ordinance depend upon whether the platform is an "intermediary" or "advertising platform." Section 4-13-200 of the Ordinance states that "[n]o person shall engage in the business of short term residential intermediary without first having obtained a license under Article II of this Chapter 4-13." Section 4-13-300 states that "[n]o person shall engage in the business of short term residential advertising platform without first having obtained a license under Article II of this Chapter 4-13." The Ordinance thus makes it unlawful to engage in either "intermediary" or "advertising platform" business without first registering for the license that specifically relates to the applicant's specific business.

36. The definitions of the two operative types of business—that of "short term residential intermediary" and that of "short term residential advertising platform"—make clear that an entity cannot register as both: although both categories apply to any person who, for compensation of a fee, "uses a platform to connect guests with a short term residential rental provider for the purpose of renting a short term residential rental," the two business types differ in that an "intermediary" is one that "primarily lists shared housing units on its platform," and an "advertising platform" is one that "primarily lists" vacation rentals and other categories. Ordinance § 4-13-100. The Ordinance thus requires any internet platform to obtain a license as *either* an "intermediary" or an "advertising platform" before permitting short-term rental listings.

37. Not only are the "intermediary" and "advertising platform" categories mutually exclusive, but they give rise to completely different and inconsistent responsibilities, as alleged more fully below. The Ordinance also imposes significant fines upon any internet platform that

fails to comply with these provisions—fines that apply broadly to all violations of the Ordinance by platforms and that can reach up to $3,000 per violation per day. Ordinance § 4-13-410.

38. Despite these significant consequences, the definitions in the Ordinance make it impossible for a platform to determine into which business category it falls. Among other reasons, the distinction between the two categories turns upon terms that are indistinguishable from one another. An "intermediary" is a person who "primarily lists shared housing units on its platform," whereas an "advertising platform" is one who "primarily lists licensed bed-and breakfast establishments, vacation rentals or hotels on its platform or dwelling units that require a license under this Code to engage in the business of short term residential rental." Ordinance § 4-13-100. But the terms "vacation rentals" and "shared housing units" are defined in a way that makes them indistinguishable from one another, so that the use of those terms in the crucial definitions of "intermediaries" and "advertising platforms" renders the resulting regulatory scheme incomprehensible.

39. The Ordinance defines "vacation rental" as "a dwelling unit that contains 6 or fewer sleeping rooms that are available for rent or for hire for transient occupancy by guests." Ordinance § 4-6-300(a). A "shared housing unit," in turn, is "a dwelling unit containing 6 or fewer sleeping rooms that is rented, or any portion therein is rented, for transient occupancy by guests." *Id.* § 4-14-010. As is evident from the text of these definitions, there is no functional difference between the two terms—even though the Ordinance takes pains to state that one cannot include the other: the term "shared housing unit" is expressly defined not to include "vacation rentals," and the term "vacation rentals" likewise is defined to exclude "shared housing units." *Id.* § 4-6-300(a). Both definitions apply to the rental of part of a dwelling unit (the "rooms" in a "vacation rental" are available for rent, as is "any portion" of a "shared housing

unit"). And the Ordinance provides no guidance as to whether all or part of a dwelling unit should be counted as a shared housing unit or as a vacation rental, even though a platform can be heavily fined for failing to apply for a license to operate a business that lists "primarily" one rather than the other.

40. The failure of the Ordinance to draw an intelligible distinction between "vacation rentals" and "shared housing units" is not just a problem of semantics. Rather, because the entire regulatory structure for online platforms turns on that very distinction, it places such platforms at imminent risk of substantial fines for noncompliance because there is no way for such a platform to determine in advance what it needs to do to comply.

41. The ramifications for an internet platform of being categorized as an intermediary as opposed to an advertising platform are significant. Among other things, the Ordinance subjects advertising platforms and intermediaries to substantially different licensing, reporting, and legal requirements, so that any misstep by a platform operator in determining and documenting its own classification can result in one or more violations, leading to fines of up to $3,000 per violation, per day. Ordinance § 4-13-410.

42. An intermediary must, on behalf of the homeowners, register all "shared housing units" listed on its platform with the City. Ordinance §§ 4-14-020(a) & 4-13-230(a). The registration application must include: (1) the name of the shared housing host, who must be a natural person; (2) the address of the unit; (3) contact information for the host or other local contact person; (4) whether the unit is a single-family home or in a multi-unit building and whether the unit will be rented in whole or in part; (5) whether the unit is the shared housing host's primary residence; (6) any other information that the City "may reasonably require in connection with the issuance or renewal of a registration"; and (7) either with the application or

separately, an attestation by the intermediary that it has provided the host with a summary of the requirements of the Ordinance and that the host has reviewed and understands the requirements. *Id.* § 4-14-020. If a homeowner operates more than one shared housing unit, then the owner must obtain a "shared housing unit operator" license. *Id.* §§ 4-16-100 & 4-16-200.

43. Intermediaries must comply with specific reporting rules, including by submitting a report every two months stating: (1) the total number of short-term rentals listed; (2) for each rental, the total number of nights rented; (3) the amount paid by guests; (4) the total amount of tax paid by the intermediary to the City;[3] (5) the cumulative total of short-term rental units listed on the platform year-to-date; and (6) a notation of all units listed on the platform that the City has determined to be ineligible for listing. *See* Ordinance § 4-13-240(a). Intermediaries must "keep accurate books and records and maintain such books and records for a period of three years." *Id.* § 4-13-240(d).

44. Advertising platforms, by contrast, do not have the option of registering vacation rentals that list on their platforms: rather, each owner of such a rental must individually apply for a license to rent the unit and pay a $250 fee. Ordinance § 4-6-300(b). Advertising platforms also must submit reports on a different schedule and with different content requirements. The Ordinance states that each advertising platform must submit monthly reports, in a form approved by the Commissioner, that state, for each vacation rental listing included on the platform, the name, address, and license number associated with that listing to the extent not previously reported to the Commissioner. *Id.* § 4-13-340.

45. Intermediaries and their customers also do not have to wait for approval of any registration of an underlying unit before listing and renting that unit. Ordinance § 4-13-230(d).

[3] This suggests that intermediaries must collect and remit taxes, but there does not appear to be any provision in the Ordinance that expressly imposes this requirement.

Rather, the owner may list immediately, and begin to collect revenues without delay. *Id.* By contrast, it is illegal for a vacation rental owner to list the unit—or for an advertising platform to post such a listing—until that unit has been finally licensed and the license number received and posted. *Id.* § 4-13-320(d).

46. Again, the failure to perform any of these distinct functions required of an intermediary versus an advertising platform before engaging in business activity covered by each such status, or the performance of acts permitted only under one status when a service has a license designating it as the other status, can give rise to severe penalties—and yet there is no way for an internet service to know from the definitions in the Ordinance which business designation applies to that service's platform.

47. The above definitional problems and resulting uncertainty not only affect internet platforms, but also makes it impossible for homeowners seeking to list their units for short-term rental to determine how to comply. Because the definitions of "vacation rental" and "shared housing unit" are functionally identical, a homeowner cannot tell whether to proceed with the compliance method for one versus the other. The only guidance given to the homeowner is that, again, the two definitions are mutually exclusive so that a given unit is either one or the other but not both. Ordinance § 4-6-300(a). And, as with platforms, the Ordinance authorizes substantial fines for homeowners who do not comply—including provisions that would require the homeowner, despite the impossibility of doing so based upon the definitions in the Ordinance, to have made the right choice at the outset in classifying his or her unit. *See, e.g.*, *id.* §§ 4-6-300(i) (imposing daily fines of between $2,500 and $3,000 on any person who "operates the business of vacation rental" without first having obtained a license) & 4-14-090 (imposing daily fines of

between $1,500 and $3,000 on any person who violates Chapter 4-14, which prohibits listing a shared housing unit prior to having registration submitted by an intermediary, *id.* § 4-14-020(a)).

48. Further, because the Ordinance fails to provide a meaningful basis upon which to distinguish "intermediaries" from "advertising platforms," it is unclear which requirements and regulations apply to a given internet platform, or to a given homeowner seeking to list a unit for rental. For example, the Ordinance strongly suggests that an advertising platform may not list a shared housing unit. Under Section 4-13-320(d), it is unlawful for an advertising platform to list any rental unless the platform includes the relevant license number in the listing, and shared housing units do not have license numbers. Yet this conclusion would contravene the definition of an "advertising platform," which requires only that the platform "primarily"—not "exclusively"—list licensed units. Ordinance § 4-13-100.

49. The confusion between "intermediary" status and "advertising platform" status also is exacerbated by the myriad apparent errors in the Ordinance. For example, license fees for advertising platforms are calculated based on the number of short-term rentals an "intermediary" has "listed on its platform." Ordinance § 4-5-010. And at one point the Ordinance purports to oblige advertising platforms and intermediaries to provide notice of the requirements of the Ordinance to homeowners, but in so doing, inaccurately refers to requirements found in other parts of the Ordinance. Ordinance § 4-13-320(e) (stating that an advertising platform must tell vacation rental owners to include information in their listings set forth in Section 4-14-040(a)(1) through (a)(4), which requirements relate solely to listings for shared housing units).

Even if the Categories in the Ordinance Could be Understood, the Status of a Listing Service Could Change Due to Actions Beyond its Control

50. Even if an internet service could discern at any given time whether it is an "intermediary" or an "advertising platform" and properly apply for a license to operate as such,

and even if there were any plausible difference between "vacation rentals" and "shared housing units," the status of such an internet service as a platform that "primarily" lists "vacation rentals" versus "shared housing units" could change at any time by virtue of third-party listing activity over which the service has no control. The mix of listings on HomeAway's websites, for example, can change on a moment-to-moment basis depending on whether listings are revised, added, or removed. Because the process for listing properties on HomeAway's websites is automated, listings appear on the websites almost immediately after being posted or revised by a homeowner. Yet, under the Ordinance, a change in the character of listings on HomeAway's sites could cause it to shift at any given time from "primarily" listing "vacation rentals" to "primarily" listing "shared housing units," or vice versa—again, assuming that there were an intelligible distinction between the two categories. Thus, a platform that correctly applies for a license as one status—through no fault of its own and without its even being aware—at any moment could fall out of compliance and be faced with significant fines.

The City's Pre-Determination of HomeAway's Status Vis-à-Vis its Competitor and the Related Bias in the Structure of the Ordinance

51. In addition to the serious problems described above, there are indications in the circumstances surrounding the Ordinance and in its resulting structure that the Ordinance was designed to disfavor HomeAway in the Chicago market and to favor Airbnb, HomeAway's only significant competitor in that market—including by purporting to pre-determine what regulatory status each such entity would occupy and thereby giving Airbnb a significant competitive advantage. As such, the distinctions drawn in the Ordinance not only lack a rational basis, but create an anticompetitive environment that deliberately and arbitrarily favors one competitor over another.

52. The problematic nature of the City's approach was illustrated by a series of unusual statements in connection with the passage of the Ordinance. In those statements—issued by the City, placed on its website, and then widely repeated in the press—the City announced that it considered Airbnb to be an "intermediary," as that term is defined in the Ordinance, and HomeAway to be an "advertising platform"—all without providing explanation or guidance for these classifications, and despite the fact that nothing in the Ordinance itself can be read to support such a distinction, as shown above.[4]

53. This announced pre-determination of a crucial regulatory distinction under the Ordinance is unusual and problematic in and of itself, and suggests that the Ordinance may have been written to favor one party over the other. This concern is borne out by the manner in which the resulting Ordinance is framed and has been applied by the City. Specifically, if the City's pre-determined conclusion that Airbnb is an intermediary and HomeAway is an advertising platform were implemented, the operation of the Ordinance would allow Airbnb to gain a significant and unjustified competitive advantage.

54. Despite the lack of meaningful criteria to determine what entities qualify as intermediaries versus advertising platforms, the practical effect of that distinction is potentially devastating to advertising platforms—the status that the City pre-assigned to HomeAway. As set out above, the Ordinance purports to set out objective definitions that classify short-term rental units into specific categories—as relevant here, shared housing units versus vacation rentals—and states that one cannot include the other. It appears to leave no room for discretion on the

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[4] *See, e.g.*, *Information About the Shared Housing Ordinance*, The City of Chicago's Official Site (Sept. 12, 2016), https://www.cityofchicago.org/city/en/depts/bacp/provdrs/bus/alerts/2016/september/sharedhousingordinance.html (last visited May 12, 2017); *Regulating the House Sharing Industry*, The City of Chicago's Official Site, https://www.cityofchicago.org/content/dam/city/depts/bacp/ordinances/housesharesummaryfinal.pdf (last visited May 12, 2017).

part of the unit owner to decide into what category a given unit falls. But, to the extent that this ambiguity might give homeowners the incentive to try to decide for themselves how to classify their units, the Ordinance creates a deliberate and significant incentive for such owners to elect the status of shared housing units—to the detriment of any entity, such as HomeAway, that the City deems to constitute an "advertising platform."

55. In particular, the process of renting a "shared housing unit"—which potentially may be listed only through an intermediary—is substantially faster, less burdensome, and more lucrative than for a "vacation rental." Intermediaries may register shared housing units on behalf of homeowners (at no cost to the homeowners), whereas vacation rentals—the primary listings for advertising platforms—must individually apply for a license, pay a $250 fee, and comply with even more burdensome requirements than those imposed on intermediaries. Ordinance §§ 4-5-010 & 4-6-300. Homeowners renting a shared housing unit through an intermediary can list their property and begin collecting revenue after opening an account with the intermediary, whereas owners renting a vacation rental must wait to obtain a license. *Id.* §§ 4-6-300(i) & 4-13-230(d). The Ordinance imposes a minimum $2,500 per day fine on owners who operate vacation rentals without a license. *Id.* § 4-6-300(i). And owners of registered "shared housing units" have no independent insurance obligations, whereas owners of "vacation rentals" must obtain significant insurance coverage. *Id.* § 4-6-300(f)(1).

56. Significantly, the Ordinance severely restricts the number of units that can be used as a vacation rental or shared housing unit. In buildings with more than five units, no more than six units or one quarter (whichever is less) of the total number of units may be licensed as vacation rentals or registered as shared housing units. Ordinance §§ 4-6-300(c)(6) & 4-14-060(f). In buildings with fewer than five units, generally only one unit may be licensed as a

vacation rental or registered as a shared housing unit. *Id.* §§ 4-6-300(c)(5) & 4-14-060(e). This structure significantly favors intermediaries, because short-term rental owners, faced with the ambiguous definitions of the operative terms and trying to ensure that they will not lose out, will try to categorize their units as "shared housing units" to be listed on an intermediary. This "first come first served" feature of the Ordinance places platforms that "primarily" list vacation rentals at an increasingly significant competitive business disadvantage—a point that renders even more problematic the City's announcement that it had pre-designated Airbnb as an "intermediary" and relegated HomeAway to the status of an "advertising platform."

57. In light of these differences, and to the extent that owners may try to game the system in light of the ambiguous definitions of the Ordinance and list their properties through the faster shared housing unit registration process, the result will be a devastating negative impact on the ability of any "advertising platform" to compete in the Chicago market.[5]

HomeAway's Attempts to Reach a Resolution With the City

58. After the City passed the Ordinance, HomeAway attempted to engage with the City in discussions geared toward determining whether HomeAway could comply with the Ordinance despite its numerous flaws. During this period, the City did not enforce the Ordinance against HomeAway. In May 2017, it became clear that the parties' discussions would not yield a resolution, and the City indicated that it expected immediate compliance by HomeAway. Accordingly, HomeAway filed this action.

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[5] By defining "vacation rentals" and "shared housing units" to exclude properties that are not the provider's primary residence, the Ordinance works additional disadvantage to advertising platforms. The Ordinance requires an adjustment from the Commissioner in order to list a short-term rental that is not the provider's primary residence. Ordinance §§ 4-6-300(l), 4-14-100(a). For advertising platforms that focus on rentals of whole homes, this could present a significant obstacle for the homeowners that list on their platforms. Intermediaries that focus instead on partial rentals (where the homeowner may be more likely to be a resident) may be considerably less affected by this obstacle, and thereby gain a competitive advantage.

C. The Ordinance is Unlawful and Unconstitutional

59. The requirements and obligations that the Ordinance imposes on intermediaries and advertising platforms violate several federal laws, including the CDA, the SCA, and various provisions of the United States Constitution.

60. Licensing Requirements. The Ordinance creates a complex licensing process that confers unbridled discretion on regulators to grant or deny licenses based on their subjective evaluation of the applicant's materials, resulting in potential censorship in violation of the First Amendment. The Ordinance also does not place a time limit within which the City must make a licensing decision. Thus, as alleged further below, the Ordinance operates as a prior restraint on speech.

61. The Ordinance prohibits intermediaries and advertising platforms from publishing residential listings—speech protected under the First Amendment—unless they first obtain a license. Ordinance §§ 4-13-200 & 4-13-300. The licensing requirements include the submission of two "plans," as well as "any other information the commissioner may reasonably require." *Id.* §§ 4-13-210(4)–(6) & 4-13-310(4)–(6).

62. The Ordinance provides virtually no instruction regarding the required content of the two plans. The first plan requires applicants to describe their "procedures, processes and policies for ensuring that [intermediaries and advertising platforms] and any short term residential rental provider utilizing the platform are, and will remain, in compliance with" the Ordinance. Ordinance §§ 4-13-210(4) & 4-13-310(4). The second plan requires an applicant to "establish . . . a process, to be approved by the commissioner, for mitigating the impact on quality of life of units determined to be ineligible . . . or any hotel that is not properly licensed under Chapter 4-6 of this Code." *Id.* §§ 4-13-210(5) & 4-13-220(h); §§ 4-13-310(5) & 4-13-320(g).

63. The Ordinance does not provide the Commissioner or regulated entities with any guidance on the circumstances under which a plan should or should not be approved. Nor does it instruct the Commissioner or applicants as to what other information the Commissioner may require before issuing a license—other than that such information requests be "reasonabl[e]." The Ordinance thus leaves the approval of licenses subject to the unguided discretion of the Commissioner to construe the definitions of vague terms and request unspecified records. This violates the First and Fourteenth Amendment.

64. Listing Requirements. The listing requirements of the Ordinance violate the CDA and the First Amendment because the Ordinance purports to impose requirements and restrictions on rental listings that are created by homeowners to be published on platforms. *See* Ordinance §§ 4-13-220, 4-13-230 & 4-13-320. These requirements and restrictions violate the CDA by punishing platforms that publish, or refuse to remove, third-party content unless certain requirements are met. These provisions also improperly regulate communications that are protected speech under the First Amendment, based on their content—namely, whether the listings contain advertisements for short-term rentals.

65. Specifically, the Ordinance mandates that shared housing unit providers include certain details regarding the unit on its listing, including the cancellation and check-in and check-out policy, the number of sleeping rooms and bathrooms, and where applicable, the license or registration number. Ordinance § 4-14-040(a)(1)-(4). The Ordinance prohibits any advertising platform from posting listings for any vacation rental unless the platform has specifically advised vacation rental owners to include the specified information on their listings. *Id.* § 4-13-320(e).

66. Under the Ordinance, advertising platforms are liable for fines up to $3,000 per day if they publish listings created by third parties that do not "include[e] the provider's vacation

rental license number, hotel license number or bed-and-breakfast establishment license number, as applicable." Ordinance §§ 4-13-410 & 4-13-320(d). This penalty is imposed regardless of whether the advertising platform knows of the content created by the third party. These provisions effectively require advertising platforms to monitor, review, and in practice, block listings to avoid civil liability under the Ordinance. In order to comply, advertising platforms will have to spend substantial resources to comb through thousands of online listings to identify and remove noncompliant listings.

67. The Ordinance also subjects intermediaries to potential liability based on their posting of third-party content. Intermediaries also must obtain Commissioner approval of a process to ensure posted shared housing units are updated with registration numbers upon City issuance of the registration number. Listing rentals without first complying with that process constitutes a violation of the Ordinance, and the platform also is liable for fines of up to $3,000 per day. Ordinance §§ 4-13-230(f) & 4-13-410.

68. More broadly, both intermediaries and advertising platforms must submit a "written plan" for ensuring that any short-term rental providers listing properties on their platforms "are, and will remain," in compliance with their own obligations under the Ordinance, including the listing requirements. The Ordinance provides that any violation of those plans constitutes a violation of the Ordinance itself. *See* Ordinance §§ 4-13-210(4) & 4-13-310(4); §§ 4-13-220(i) & 4-13-320(h). The Ordinance thereby charges platforms with ensuring that third-party listings comply with content requirements, and punishes platforms for noncompliant third-party content—with the result that platforms would have no choice but to pre-screen listings to ensure that owners comply with all listing requirements.

69. For these reasons, the listing requirements of the Ordinance violate both the CDA and the First Amendment, as alleged more fully below.

70. Intermediary Registration Requirements. Under the Ordinance, intermediaries must register all shared housing units listed on their platforms by submitting a registration application to the City on behalf of each shared housing unit provider. Ordinance § 4-13-230. This registration requirement violates the SCA.

71. Section 4-13-230(a) of the Ordinance requires intermediaries to disclose user information to the City when registering shared housing units listed on their platforms. The registration process requires the applicant to provide the City with several categories of personal information, including (1) the name of the shared housing unit host; (2) the address of the shared housing unit being registered; (3) the contact information for the host or a local contact person; (4) whether the shared housing unit being registered: (i) is a single family home, (ii) is a unit in a building containing multi-dwelling units, and (iii) will be listed in its entirety or whether just a portion of it will be listed; (5) whether the shared housing unit is the shared housing host's primary residence; and (6) any other information that the Commissioner "may reasonably require" in connection with issuing or renewing a registration. Ordinance §§ 4-13-230(c) & 4-14-020(b). These categories include information that is specifically protected from disclosure by federal law, as alleged more fully below.

72. Reporting Requirements. Both intermediaries and advertising platforms are subject to reporting requirements under the Ordinance. As alleged further below, the reporting requirements violate the SCA. Under the reporting provision for advertising platforms, a platform such as HomeAway must—on a monthly basis and without a subpoena or other legal process—submit a report identifying "the name of the owner, and the address and business

license number, of each hotel, bed-and-breakfast establishment, and vacation rental" currently listed on its platform that constitutes a new listing since the previous monthly report. Ordinance § 4-13-340.

73. Intermediaries must submit—again, without a subpoena or other legal process—bi-monthly reports with aggregated and individualized information for the reporting period, including the number of rentals listed, and for each such rental, the number of nights rented and the amount of rent paid, and the number of nights for which each rental is booked for the rest of the year. Ordinance § 4-13-240(a). Although some of this data may be anonymized, the Ordinance allows the City to subpoena the non-anonymous data, including details regarding a unit's bookings and its guests. *Id.* § 4-13-240(f). The Ordinance also requires intermediaries to provide additional data "as provided by the commissioner in rules." *Id.* § 4-13-240(e). Intermediaries also are required to maintain books and records for three years. *Id.* § 4-13-240(d). These requirements also violate the SCA.

74. Noticing Requirements. Both intermediaries and advertising platforms are subject to noticing requirements that effectively compel commercial speech and conscript websites to police the activity of short-term rental providers. This violates the First Amendment.

75. Under the Ordinance, intermediaries must "post a notice, in a conspicuous place on its platform" informing providers of shared housing units of the registration process, Ordinance § 4-13-230(b), notify the provider if the registration is ineligible for listing, *id.* § 4-13-230(g), and require that providers attest that they have reviewed and understood the requirements of the Ordinance, *id.* § 4-13-215.

76. Advertising platforms also must, before publishing listings on their platforms, "post a notice, in a conspicuous place on [their] website[s]" "advising" providers that they are

required to obtain a license, Ordinance § 4-13-320(d), "advise" providers of the information required to be in the listings under the Ordinance, *id.* § 4-13-320(f), notify the provider if the listing has been found ineligible, *id.* § 4-13-320(i), and require that providers attest that they will comply with applicable tax laws, *id.* § 4-13-320(c).

CLAIMS FOR RELIEF

COUNT I

Imposition of Penalties Without Due Process
(Fourteenth Amendment and 42 U.S.C. § 1983)

77. HomeAway incorporates all previous paragraphs as if fully set forth herein.

78. The Ordinance violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it purports to impose significant fines without first providing a person of ordinary intelligence with notice of the conduct it proscribes. *See, e.g.*, Ordinance §§ 4-6-300(a), 4-14-010, 4-13-100, 4-5-010 & 4-13-320(e).

79. HomeAway is entitled to sue for the above violations pursuant to 42 U.S.C. § 1983, which provides a right of action for any injured party against any person who, under color of state law, subjects the complaining party "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Defendants herein are "persons" within the meaning of this provision.

80. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

COUNT II

Violation of and Preemption Under the Communications Decency Act
(47 U.S.C. § 230 and 42 U.S.C. § 1983)

81. HomeAway incorporates all previous paragraphs as if fully set forth herein.

82. The CDA defines an "interactive computer service" as "any information service . . . that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet." 47 U.S.C. § 230(f)(2). HomeAway is a provider of an interactive computer service within the meaning of the CDA because it operates interactive online platforms, including HomeAway.com and VRBO.com, and provides information to multiple users by giving them computer access to a computer server. The third-party hosts that create listings on HomeAway are persons responsible for the creation or development of information provided through HomeAway, within the meaning of 47 U.S.C. § 230(f)(3).

83. The CDA provides that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). The Ordinance violates this provision, and is preempted, because it penalizes platforms such as HomeAway for the publication of third-party listings if those listings do not include a license number. It thereby unlawfully treats HomeAway as the publisher or speaker of third-party content posted on the site. *See* Ordinance §§ 4-13-410 & 4-13-320(d). The Ordinance also charges platforms with ensuring that third-party listings comply with content requirements and punishes platforms for noncompliant third-party content.[6] This, again, violates, and is preempted by, the CDA.

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[6] *See, e.g.*, Ordinance §§ 4-13-210(4) (intermediary must submit a plan for ensuring that owners using their platforms are complying with the Ordinance); 4-13-310(4) (same for advertising platform); 4-13-220(i) (intermediary must comply with plan pursuant to Section 4-13-210(4); 4-13-320(h) (same for advertising platform); 4-13-220(e) (punishing publication of listing by intermediary unless intermediary "advises" the provider that the provider must comply with applicable rental agreements and building rules); 4-13-220(f) (punishing publication of listing by intermediary unless intermediary "advises" the provider that certain content is required in its listings); 4-13-320(e) (same for advertising platform); 4-13-220(g) (punishing intermediary's failure to allow provider to remove listings); 4-13-320(f) (same for advertising platform); 4-13-220(j) (punishing intermediary for failure to establish processes to ensure that license numbers are included in third-party listings for hotels, bed-and-breakfasts, and vacation rentals); 4-13-230(f) (punishing intermediary for failure to establish a process to ensure changes to third-party listings to reflect assigned registration numbers for

84. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described above.

COUNT III

Violation of and Preemption Under the Stored Communications Act (18 U.S.C. § 2701 *et seq.* and 42 U.S.C. § 1983)

85. HomeAway incorporates all previous paragraphs as if fully set forth herein.

86. HomeAway is a provider of electronic communication services under the SCA because it provides customers "the ability to send or receive wire or electronic communications." 18 U.S.C. § 2510(15). HomeAway also is a provider of remote computing services because it provides customers "computer storage or processing services by means of an electronic communications system." 18 U.S.C. § 2711(2).

87. Under the SCA, a provider of an electronic communication service or remote computing service to the public shall not knowingly divulge contents of communications or records or other information pertaining to a customer to any governmental entity without proper legal process. 18 U.S.C. §§ 2702(a)–(c); 2703(c).

88. The Ordinance violates, conflicts with, and is preempted by the SCA because it requires HomeAway to "divulge a record or other information pertaining to a subscriber to or customer of such service" to a "governmental entity" without a subpoena or other legal process. 18 U.S.C. §§ 2702(a)(3), (c)(1); 2703(c); s*ee also* Ordinance §§ 4-13-230, 4-13-240 & 4-13-340.

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shared housing units); 4-13-230(g) (punishing intermediary for failure to notify provider that City has determined unit to be ineligible); 4-13-320(i) (same for advertising platform, but must also notify provider of duty to remove listing); 4-13-320(c) (punishing publication of listing by advertising platform unless platform obtains "attestation" from provider that the provider will comply with tax laws); 4-13-320(d) (punishing publication of listing by advertising platform unless platform (i) posts a notice "advising" providers that they must obtain a license in order to list and (ii) includes license numbers in listings).

89. The Ordinance further violates, conflicts with, and is preempted by the SCA because it requires HomeAway to "maintain books and records for a period of three years." 18 U.S.C. § 2703(f)(1)-(2). *See* Ordinance § 4-13-240(d).

90. HomeAway is entitled to sue for the above violations pursuant to 42 U.S.C. § 1983, which provides a right of action for any injured party against any person who, under color of state law, subjects the complaining party "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Defendants herein are "persons" within the meaning of this provision.

91. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

COUNT IV

Unreasonable Searches and Seizures
(Fourth Amendment, 42 U.S.C. § 1983)

92. HomeAway incorporates all previous paragraphs as if fully set forth herein.

93. The Ordinance violates the Fourth Amendment to the United States Constitution because forcing HomeAway to disclose private subscriber information to the City without proper legal process constitutes an unreasonable search and seizure of such electronic communications. *See* Ordinance §§ 4-13-230, 4-13-240 & 4-13-340.

94. The City's attempt to force HomeAway to disclose such private materials violates the Fourth Amendment rights of both HomeAway and its customers. HomeAway has standing to pursue this claim in its own right because it is in possession of the information of which the City seeks to force disclosure, and the purported disclosure obligations run directly against HomeAway. HomeAway also may vindicate the constitutional rights of its subscribers because the constitutional injury threatened by the Ordinance—HomeAway's compelled disclosure of

private subscriber information to the City—would not be known to the individual subscribers and individual subscribers would not be able to effectively defend their constitutional rights, given that disclosure obligations under the Ordinance run directly to HomeAway. Absent enforcement by HomeAway, the violations of these third parties' rights would evade detection.

95. HomeAway is entitled to sue for the above violations pursuant to 42 U.S.C. § 1983, which provides a right of action for any injured party against any person who, under color of state law, subjects the complaining party "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Defendants herein are "persons" within the meaning of this provision.

96. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

COUNT V

Content Based Restriction on Speech
(First and Fourteenth Amendments and 42 U.S.C. § 1983)

97. HomeAway incorporates all previous paragraphs as if fully set forth herein.

98. The Ordinance is invalid under the First and Fourteenth Amendments to the United States Constitution because it constitutes a content-based restriction that would impermissibly chill a substantial amount of protected speech, and it is not narrowly tailored to achieve a compelling or substantial governmental interest.

99. The City seeks to proscribe and punish speech, in the form of online short-term rental listings and advertisements, based on the content of that speech, *see* Ordinance §§ 4-13-210, 4-13-220, 4-13-230, 4-13-300, 4-13-310, & 4-13-320, but the City cannot show why less restrictive means of accomplishing its legitimate goals are not available, such as by enforcing

advertising restrictions directly against short-term rental providers who post the allegedly unlawful advertisements.

100. HomeAway is entitled to sue for the above violations pursuant to 42 U.S.C. § 1983, which provides a right of action for any injured party against any person who, under color of state law, subjects the complaining party "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Defendants herein are "persons" within the meaning of this provision.

101. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

COUNT VI

Prior Restraint of Speech
(First and Fourteenth Amendments and 42 U.S.C. § 1983)

102. HomeAway incorporates all previous paragraphs as if fully set forth herein.

103. The First Amendment provides that "Congress shall make no law . . . abridging the freedom . . . of the press." U.S. Const. amend I. "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 556 (1976). "Any prior restraint on expression comes . . . with a heavy presumption against its constitutional validity." *Id.* at 558.

104. The Ordinance gives the Commissioner the power to determine whether HomeAway may publish third-party listings for short-term rentals based on the manner in which HomeAway proposes in its license application to allow owners to list those properties. Ordinance §§ 4-13-200, 4-13-210, 4-13-300, 4-13-310.

105. The Commissioner's approval of a license application, and therefore HomeAway's right to act as a forum for this speech, is not a matter of routine, but instead

involves the appraisal of facts, the exercise of judgment, and the formation of an opinion by the Commissioner.

106. The licensing and associated requirements stifle speech and constitute an unconstitutional prior restraint on publication, in violation of the First and Fourteenth Amendments of the United States Constitution. The prior restraint that would result from the City's enforcement actions is not justified by any compelling or substantial government interest.

107. HomeAway is entitled to sue for the above violations pursuant to 42 U.S.C. § 1983, which provides a right of action for any injured party against any person who, under color of state law, subjects the complaining party "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Defendants herein are "persons" within the meaning of this provision.

108. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

COUNT VII

Imposition of Civil Penalties without Scienter
(First and Fourteenth Amendments and 42 U.S.C. § 1983)

109. HomeAway incorporates all previous paragraphs as if fully set forth herein.

110. The Ordinance violates the First Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution because it purports to impose strict liability on websites for publishing speech without any requirement of scienter. *See* Ordinance § 4-13-410.

111. HomeAway is entitled to sue for the above violations pursuant to 42 U.S.C. § 1983, which provides a right of action for any injured party against any person who, under color of state law, subjects the complaining party "to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws" of the United States. Defendants herein are "persons" within the meaning of this provision.

112. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

COUNT VIII

Compelled Speech
(First and Fourteenth Amendments and 42 U.S.C. § 1983)

113. HomeAway incorporates all previous paragraphs as if fully set forth herein.

114. The Ordinance violates the First Amendment and Due Process Clause of the Fourteenth Amendment to the United States Constitution because it compels platforms like HomeAway to issue specific statements to their customers about the purported requirements governing the listing of short-term rentals. *See, e.g.*, Ordinance §§ 4-13-230(b), 4-13-230(g), 4-13-215, 4-13-320. These provisions require HomeAway to make statements to its customers that it otherwise would not make—including statements with which it may not agree and that it does not support. The compelled notices are not tailored to advance a substantial interest.

115. HomeAway is entitled to sue for the above violations pursuant to 42 U.S.C. § 1983, which provides a right of action for any injured party against any person who, under color of state law, subjects the complaining party "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Defendants herein are "persons" within the meaning of this provision.

116. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

COUNT IX

Equal Protection Clause
(Fourteenth Amendment and 42 U.S.C. § 1983)

117. HomeAway incorporates all previous paragraphs as if fully set forth herein.

118. The Ordinance violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Ordinance draws a distinction between advertising platforms and intermediaries that is arbitrary and meaningless, and yet the Ordinance imposes different restrictions and requirements on websites based on that distinction. Further, as set out above, the City has purported to pre-determine that HomeAway is an advertising platform and Airbnb is an intermediary. The resulting different treatment of HomeAway and Airbnb under the Ordinance—by virtue of restrictions and requirements that place advertising platforms at a significant competitive disadvantage—lacks rational basis and arbitrarily creates an anticompetitive market, to the detriment of the public and specifically both owners and potential guests of short-term rentals. *See, e.g.*, Ordinance §§ 4-6-300(b), (c)(5)–(6), (i), 4-13-230, 4-14-060(e)–(f).

119. HomeAway is entitled to sue for the above violations pursuant to 42 U.S.C. § 1983, which provides a right of action for any injured party against any person who, under color of state law, subjects the complaining party "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Defendants herein are "persons" within the meaning of this provision.

120. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

COUNT X

Declaratory Relief
(28 U.S.C. § 2201)

121. HomeAway incorporates all previous paragraphs as if fully set forth herein.

122. This action presents an actual case or controversy between HomeAway and the City concerning the validity and enforceability of the Ordinance.

123. Because the Ordinance violates the CDA, the SCA, and the First, Fourth and Fourteenth Amendments to the United States Constitution, HomeAway asks for a declaration pursuant to 28 U.S.C. § 2201 that the Ordinance is invalid and unenforceable.

124. HomeAway will suffer irreparable and imminent harm if the Ordinance is enforced as written, as described in more detail above.

PRAYER FOR RELIEF

WHEREFORE, HomeAway respectfully requests that the Court:

1. Declare that the Ordinance to be codified in the Chicago Municipal Code, as applied to HomeAway, is preempted by, and invalid under, 47 U.S.C. § 230 and 18 U.S.C. § 2701 *et seq.* and also is unconstitutional under the First, Fourth, and Fourteenth Amendments to the United States Constitution;

2. Preliminarily and permanently enjoin the Defendants and their respective officers, agents, servants, employees, and attorneys, and those persons in concert or participation with them, from taking any actions to enforce against HomeAway the Ordinance to be codified in the Chicago Municipal Code;

3. Award HomeAway its reasonable costs and attorneys' fees under 42 U.S.C. § 1988; and

4. Award HomeAway other and further relief as the Court deems just and proper.

DATED: May 22, 2017

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